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Attorneys for the
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

RUFUS R. ROBINSON III,)	CIVIL NO. 04 00672 HG KSC
GRETCHEN M. ROBINSON,)	
)	UNITED STATES' OPPOSITION
Plaintiffs,)	TO PLAINTIFFS' MOTION TO
)	EXTEND TIME FOR DISCOVERY;
v.)	DECLARATION OF RACHEL S.
)	MORIYAMA; CERTIFICATE OF
TRIPLER ARMY MEDICAL CENTER;)	SERVICE
TRIPLER ARMY MEDICAL CENTER,)	
DIRECTOR OF NEONATAL)	
INTENSIVE CARE UNIT; STATE OF)	
HAWAII, DEPARTMENT OF HUMAN)	
SERVICES; STATE OF HAWAII,)	
CHILD PROTECTIVE SERVICE;)	
PATRICIA SNYDER, SOCIAL)	
SERVICES DIVISION)	
ADMINISTRATOR; DAVID K. Y.)	
KAM, CPS SUPERVISOR; ELLIOTT)	
PLOURDE, CPS WORKER;)	
JUDGE LILLIAN RAMIREZ-UY,)	
K. KANAA,)	
)	
Defendants.)	
)	
)	
)	

UNITED STATES' OPPOSITION TO
PLAINTIFFS' MOTION TO EXTEND TIME FOR DISCOVERY

On or about March 14, 2006, Plaintiffs filed a Motion to Extend Time for Discovery (hereinafter the "Discovery Extension Motion"), in which they requested a 90-day extension of the March 3, 2006 discovery cut-off date. In their supporting memorandum, Plaintiffs argued that they needed more time to conduct depositions on written interrogatories and to obtain documents from a list of parties and witnesses, which appeared to include the Tripler Army Medical Center.

As a final judgment has been entered in favor of the Tripler Army Medical Center ("TAMC") and the Director of the Neonatal Intensive Care Unit (collectively referred to as the "United States" or the "Federal Defendants") on August 26, 2005,¹ the United States Attorney's Office ("USAO") for the District of Hawaii hereby submits this memorandum in opposition to the Discovery Extension Motion as counsel representing any and all federal witnesses.

¹ On June 27, 2005, the Court issued an Order Granting Defendants Tripler Army Medical Center and Tripler Army Medical Center, Director of Neonatal Intensive Care Unit's Motion to Dismiss and for Summary Judgment. On August 23, 2005, the Court entered an Order Granting United States' Motion for Rule 54(b) Certification and Entry of Final Judgment. On August 26, 2005, Judgment was entered in favor of the Federal Defendants. Plaintiffs have filed a notice of appeal from the Judgment and said appeal currently is pending before the Ninth Circuit.

I. ARGUMENT

The Amended Complaint in this action was filed on November 16, 2004. Under the original Rule 16 Scheduling Order, entered herein on May 9, 2000, all parties were required to complete discovery by January 6, 2006. Pursuant to the Amended Rule 16 Scheduling Order, entered herein on November 3, 2005, the discovery cut-off date was moved back to March 3, 2006.

Throughout these proceedings, the USAO has responded promptly to all of Plaintiffs' formal and informal discovery requests. In August of 2005, the USAO expedited the production of a certified copy of TAMC medical records relating to Kewai Robinson in response to the request of Plaintiffs and the State of Hawaii. See the attached Declaration of Rachel S. Moriyama (hereinafter the "Moriyama Declaration") at ¶ 2. In or about early September 2005, Plaintiffs sought to depose or otherwise obtain information from various federal witnesses, including the following:

- (1) Donald Devaney, of the provost marshals office;
- (2) Kathleen Hanai-Lee, a pediatric social worker; and
- (3) Dr. Jennifer W. Mbuthia.²

See the Moriyama Declaration at ¶ 3. Because certain witnesses were unavailable, see the Moriyama Declaration at ¶ 5, and

² Plaintiffs did not inform the USAO of their intent to depose Dr. Agnes Sierocka-Castaneda until October 4, 2005. See the Moriyama Declaration at ¶ 9.

because Plaintiffs were unable or unwilling to retain certified court reporters to record and prepare transcripts of any oral depositions, the USAO offered to permit Plaintiffs to depose the federal witnesses by written interrogatories.³ See the Moriyama Declaration at ¶s 7 and 10. On or about November 9, 2005, Plaintiffs submitted written questions to the USAO directed to Dr. Jennifer Mbuthia and Dr. Agnes Sierocka-Castaneda only. See the Moriyama Declaration at ¶ 11. From November 2005 through January 2006, the USAO worked with Plaintiffs to obtain the necessary approvals to allow Dr. Mbuthia and Dr. Sierocka-Castaneda to answer Plaintiffs' written interrogatories, and worked with Dr. Mbuthia and Dr. Sierocka-Castaneda to prepare their respective written responses. See the Moriyama Declaration at ¶ 12. The USAO served Plaintiffs with Dr. Mbuthia's written response on December 28, 2005, and Dr. Sierocka-Castaneda's written response on January 30, 2006. See the Moriyama Declaration at ¶ 12.

Notwithstanding the USAO's cooperation with regard to obtaining the testimony of Dr. Mbuthia and Dr. Sierocka-

³ The USAO's offer to permit depositions by written interrogatories was subject to Plaintiffs' compliance with the applicable regulations governing the ability of Department of Defense employees to disclose official information or testimony. See Department of Defense Directive 5405.2 and Army Regulation 27-40, Chapter 7, published at 32 C.F.R. Part 516 and § 97.6. The USAO provided Plaintiffs with copies of these applicable regulations in September 2005. See the Moriyama Declaration at ¶s 4, 6 and 10.

Castaneda, Plaintiffs never sought to depose any other federal witnesses by written interrogatories -- including both Donald Devaney and Kathleen Hanai-Lee -- and never submitted any written interrogatories directed at any other federal witnesses during the permissible discovery period. See the Moriyama Declaration at ¶ 13. As nothing in the Discovery Extension Motion provides an adequate explanation or justification for Plaintiffs' failure to complete all necessary discovery involving federal witnesses prior to the March 3, 2006 discovery cut-off date, the Court should deny the instant motion as it relates to any federal witnesses.

II. CONCLUSION

Based upon the foregoing, the United States respectfully urges the Court to deny the instant motion to the extent Plaintiffs seek leave to conduct any further discovery involving any federal witness.

DATED: March 21, 2006, at Honolulu, Hawaii.

EDWARD H. KUBO, JR.
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District of Hawaii

/s/ Rachel S. Moriyama
By _____
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Attorney for Defendant
UNITED STATES OF AMERICA

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PLOURDE, CPS WORKER,)	
K. KANAA,)	
)	
Defendants.)	
_____)	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the date and by the method of service noted below, a true and correct copy of the foregoing was served on the following at their last known addresses:

Served by First Class Mail:

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Honolulu Police Officer K. Kanaa

Dated: March 21, 2006, at Honolulu, Hawaii.

/s/ Jan Yoneda
